

APR 23 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

SEYED MORTEZA KHATAMI,)	No. 02-70310
)	
Petitioner-Appellant,)	INS No. A70-786-098
)	
v.)	MEMORANDUM*
)	
JOHN ASHCROFT, Attorney)	
General,)	
)	
Respondent-Appellee.)	
_____)	

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted April 9, 2003
Pasadena, California

Before: BEEZER, FERNANDEZ, and PAEZ, Circuit Judges.

Seyed Morteza Khatami petitions for review of the Board of Immigration Appeals' denial of his motion to reopen as untimely. We dismiss the petition.

While Khatami entangles the issue before us in a welter of questions involving the effectiveness of his first two attorneys, the fact is that the motion to

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

reopen, which was filed by his third attorney, was filed far beyond the deadline. See 8 C.F.R. § 3.2(c); see also id. § 3.2(b)(2). More than that, in his late-filed motion, Khatami did not ask the BIA to equitably toll the limitations period, and, thus, failed to exhaust any claim he might have had that equitable tolling should apply. See Socop-Gonzalez v. INS, 272 F.3d 1176, 1183 (9th Cir. 2001) (en banc); Cortez-Acosta v. INS, 234 F.3d 476, 480 (9th Cir. 2000). In fact, the motion to reopen contains nary a whisper of explanation, or argument, about equitable tolling of the time for filing that motion. Thus, we do not have jurisdiction to decide the tolling question, cannot do so, and must allow the BIA's denial of the motion to reopen to stand.¹ See Rashtabadi v. INS, 23 F.3d 1562, 1567 (9th Cir. 1994).

Petition DISMISSED.

¹ We recognize that Khatami raises other issues, but they depend on the motion to reopen and, given his failure to make a proper motion before the BIA, we will not (indeed cannot) address them.